

Senate Bill 3 (Brulte)

**Telephone Advocacy Disclosure;
Mass Mailing Definition**

Version: May 22, 2001

Status: Approved by the Senate
No date yet set in Assembly Elections

Existing Law

Under Government Code Section 84305, no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on each piece of mail in a specified location. A "mass mailing" is defined as over 200 substantially similar pieces of mail, excluding a form letter or other mail that is sent in response to an unsolicited request, letter, or other inquiry.¹ Similar sender identification is also required to appear on slate mail.²

Under Elections Code Section 20008, any paid political advertisement that refers to an election, or to any candidate for state or local elective office, and that is contained in or distributed with a newspaper, shall bear the words "Paid Political Advertisement," as specified.

Existing law does not require any disclosure to be made in telephone calls made in support of, or in opposition to, a candidate or ballot measure.

Proposed Change to Law

Senate Bill 3 would prohibit candidates or committees from using campaign funds to pay for a telephone call, whether made electronically or by an individual, that advocates support of, or opposition to, a candidate or ballot measure unless the organization that paid for the call is disclosed at the end of the call. This provision differs from AB 690 (Wesson) in that SB 3 applies to a single telephone call; the Assembly measure sets a threshold level of 1,000 similar calls before its terms would apply.

This bill also amends the definition of "mass mailing" to include items over 200 delivered at a constituent's place of employment, business or post office box. The amendments also include audiotapes, videotapes, computer diskettes, compact discs and written documents within the definition of mass mailing items.

¹ Government Code Section 82041.5. All further references are to the Government Code unless otherwise noted.

² Section 82048.3.

Discussion

Telephone Disclosure Provision

The bill was amended in April to strike its previous contents and insert the telephone disclosure provision summarized above following allegations of misleading political phone calls in the Los Angeles mayoral primary election.

Enforcement Concerns The Enforcement Division has concerns about the enforceability of SB 3. In most sender identification complaints, enforcement is aided somewhat by hardcopy of the mail pieces in question, which provide some proof that a violation has occurred. In the context of telephone advocacy, proof would be more difficult. A phone bank that does not leave answering machine or voicemail messages may be difficult to pursue. Furthermore, by blocking its telephone number from displaying on caller identification equipment, a phone bank may fail to make the disclosure required by the bill and still remain anonymous. Equally as troubling is the likelihood that the recipient of a political telephone call will terminate the call prior the mandated disclosure, then call the FPPC or other authorities to complain of a violation.

A Case of Bad Facts Making Bad Law? While anonymous phone banking that attacks a candidate with false claims is clearly not unheard of in politics, the relatively infrequent use of such a campaign tactic, when taken together with the enforcement concerns expressed above, argues against a new disclosure requirement.

Mass Mailing Provision

Section 2 was added to the bill on May 22, 2001, to bring into the ambit of the sender identification requirement “mass mailings” that are delivered by any means to a recipient at his or her residence, business, place of employment or post office box. This provision is meant to prohibit circumvention of the sender identification requirements through hand delivering items which would otherwise be covered by the statute. The language also enumerates videotapes, audiotapes, computer diskettes and compact disks, along with written documents, in the list of items that are included in the mass mailing definition. This listing of items is consistent with the Commission’s regulation dealing with the prohibition on mass mailings sent at public expense.³

This amendment implicates some of the arguments made by the Commission in *Griset v. FPPC*, where the distinction between *mailed* materials versus handbills distributed in a public venue (as in *McIntyre*) was helpful in defending the sender identification statute. If SB 34 were enacted as currently worded, this distinction would be blurred to at least some degree.

Recommendation

In light of the concerns mentioned above, **staff requests the Commission’s permission to work with the author’s office to attempt to resolve these issues.**

³ Regulation 18901.